

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal Communications Commission	)	CC Docket No. 95-116
Seeking Comment on Initial Regulatory	)	
Flexibility Analysis in Telephone Number	)	
Portability Proceeding	)	

**COMMENTS OF**

**MONTANA INDEPENDENT TELECOMMUNICATIONS SYSTEMS  
MITS**

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## **INTRODUCTION**

Montana Independent Telecommunications Systems (MITS)<sup>1</sup> hereby files its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) April 22, 2005, Request for Comments on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding, FCC 05-87, CC Docket No. 95-115. The Commission seeks comment on the Initial Regulatory Flexibility Analysis (IRFA) and stated that it would utilize the comments to assist it in preparing an IRFA in conjunction with its *Intermodal Order*, 18 FCC Rcd 23697 (2003). The Commission further stated it would utilize the comments to determine whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA.

## **BACKGROUND**

MITS is a group of rural, independent and cooperative telecommunications carriers that provide a variety of services to customers residing and working in some very remote, often economically distressed parts of the United States. MITS member companies serve from 980 to nearly 14,000 access lines. MITS' members provide a full range of services, using both wireline and wireless technologies, including basic and advanced local and long distance voice services as well as dial-up and high-speed Internet access. The companies also provide interactive video conferencing via an ATM

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<sup>1</sup> MITS' members include Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, and Southern Montana Telephone Company, all headquartered in Montana.

backbone to over a hundred sites including schools, hospitals, district court facilities, and private businesses.

Individual MITS member companies have over 50 years of experience in providing quality telecommunications services in areas deemed economically unattractive by other telecommunications companies, given their low population densities and large geographical areas. Most of these companies have seen little demographic change in recent years. For example, according to the 2000 U.S. Census , while the population of Montana increased by 12.9% from 1990 to 2000, the population in most areas served by MITS companies remained steady or actually declined. For example, Hill County (major town, Havre) declined by 5.6%, Roosevelt County (major town, Wolf Point) declined by 3.4%; and Valley County (major town, Glasgow) declined by 6.8%.<sup>2</sup>

Our companies work hard each and every day to build, operate and maintain robust networks capable of providing the evolving spectrum of services demanded by our customers. Our companies have never stepped away from investing in networks and fostering future economic growth for rural subscribers. When there has been consumer demand for services, MITS members have moved aggressively to respond to those demands. In the case of intermodal number porting, however, there is little or no consumer demand and there are significant implementation costs.

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<sup>2</sup> Source: U.S. Bureau of the Census; Census & Economic Information Center, Montana Department of Commerce, Helena MT 59620

## COMMENTS

### **I. Legal Background**

On November 10, 2003, the Federal Communications Commission (FCC or Commission) released an order, known as the *Intermodal Order*<sup>3</sup> that required wireline carriers to “port numbers to wireless carriers where the requesting wireless carrier’s ‘coverage area’ overlaps the geographic location of the rate center in which the customer’s wireline number is provisioned,” so long as the “porting-in carrier maintains the number’s original rate center designation following the port.”<sup>4</sup>

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the *Intermodal Order* finding that the Commission had failed to prepare a Final Regulatory Flexibility Analysis (FRFA) regarding the impact of the order on small entities, as defined by the Regulatory Flexibility Act (RFA), which the Court found to have been required by the RFA, 5 U.S.C. § 604.<sup>5</sup> Accordingly, the Court stayed enforcement of the *Intermodal Order* as applied to carriers that qualify as small entities under the RFA and directed the FCC to prepare the required FRFA.

On April 22, 2005, the FCC released a Public Notice (FCC 05-87) requesting comments on its Initial Regulatory Flexibility Analysis (IRFA).<sup>6</sup> The FCC stated it would utilize the comments to assist it in preparing a FRFA in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA.

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<sup>3</sup> 18 FCC Rcd 23697 (2003).

<sup>4</sup> *Id.* ¶ 22.

<sup>5</sup> See *United States Telecom Ass’n v. FCC*, 400 F. 3d 29 (D.C. Cir. 2005).

<sup>6</sup> See Public Notice, FCC 05-87, Released April 22, 2005.

## II. Description of MITS' Members and How Their Costs are Recovered

MITS' members are each rural incumbent LECs that all fall well below the SBA's small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>7</sup> These companies are either telephone cooperatives or small community-based telephone companies that serve some of the most isolated, sparsely populated and rugged areas of the country. The customers of these companies have come to rely on them not only for high-quality voice services, but also for access to broadband services.

None of these companies has experienced or anticipates any measurable demand from their customers to port their telephone numbers to any other telecommunications carriers in the foreseeable future. At least to date, there has been little in the way of competitive telecommunications activity in the areas served by these companies. Because of low population densities and high costs of service, CLECs and even wireless carriers generally choose to bypass most of the geography that comprises the service areas of the MITS companies. Although MITS applauds the Commission's stated goals with respect to imposing intermodal number portability requirements on all carriers, including small, rural carriers, we believe the requirements may in some instances, actually harm the very consumers who are the supposed beneficiaries of those requirements.

The Commission's stated goals with respect to intermodal porting requirements were aimed at ensuring wide availability of number portability for consumers across the country. By making it easier for greater numbers of consumers to switch freely among carriers, the *Intermodal Order* was apparently intended to promote competition and

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<sup>7</sup> 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

encourage carriers to provide new services and lower prices for the ultimate benefit of consumers. However, at least in the case of some of the MITS companies, the requirements may actually harm consumers by increasing their costs of telecommunications services without much chance of realizing any commensurate benefits.

Since the *Intermodal Order* was issued, the MITS companies have each spent considerable resources analyzing the order, attempting to understand the order's requirements and determining how to comply with its requirements. After sending staff to numerous training sessions, working with consultants, and communicating with equipment vendors and others, the MITS companies concluded that the *Intermodal Order* was overly vague and that significant unresolved technical and economic issues associated with the implementation of intermodal LNP remained.

### **III. Montana State Proceedings Under Section 251(f)(2)**

In light of this uncertainty and the apparent lack of demand for intermodal LNP in rural Montana, MITS, on behalf of its member companies decided to pursue relief under the provisions of 47 U.S.C. § 251(f)(2) of the 1996 Federal Telecommunications Act. Accordingly, on March 15, 2004, the MITS companies filed a *Petition for Suspension* with the Montana Public Service Commission.<sup>8</sup> The primary bases for seeking the requested LNP relief from the Montana Commission were:

- The associated costs of implementing intermodal LNP would exceed the benefits, and the costs would be entirely borne not by customers who ported their numbers

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<sup>8</sup> Similar Petitions were filed by Montana Telephone Association on behalf of its members and by Ronan and Hot Springs Telephone Companies.

nor by the porting-in wireless carriers, but rather by the rural wireline LEC customers who chose not to port their numbers;

- Too much uncertainty existed regarding significant implementation issues, such as which provider was responsible for which costs;
- The FCC's requirements were the subject of pending appeals; and,
- It would have been imprudent to spend additional resources to implement LNP in light of the above.

The Petition also emphasized that suspension was absolutely necessary and appropriate to provide adequate additional time to:

- 1) Allow the companies to continue to attempt to fully analyze and understand the requirements and obligations of the FCC's Intermodal LNP Order;
- 2) Allow for a comprehensive determination of the costs and other factors associated with intermodal LNP, and a necessary evaluation of the extent to which intermodal LNP:
  - a) may impose an adverse economic impact on "users of telecommunications services" in Montana's rural areas;
  - b) may be unduly economically burdensome;
  - c) may be technically infeasible; and
  - d) may be inconsistent with the public interest, convenience and necessity;

- 3) Allow more time for the FCC and federal courts to clarify intermodal LNP requirements and to resolve the considerable uncertainty as to the obligations of Petitioners to provide intermodal LNP and to determine how the costs associated with intermodal LNP are to be recovered.

The Petition focused on the fact that issues associated with the implementation of intermodal LNP are significantly different than those associated with intramodal LNP. In particular, intramodal LNP does not result in any requirement that calls be transported to points of interconnections outside of the originating rate center, which is the case with intermodal LNP. The petitioning companies also explained that in contrast to larger carriers such as Qwest, and due to an apparent lack of interest by both customers and competitive carriers, the petitioning companies had not yet had any requirement to implement even intramodal LNP and therefore had no experience with any of the processes associated with number portability such as establishing the necessary links to the number portability databases, and had not made any of the necessary investments required to implement these processes.

The petitioning companies also explained the problems associated with the FCC's requirement that calls to ported numbers be "rated" the same after porting as before (in other words, if a call to the ported number was treated as a local call before porting, calls to that number must be treated as local after the port). This problem is most significant in situations where the "porting in" wireless carrier does not have a point of interconnect within the "porting out" LEC's rate center. Calls from the porting out LEC's customers

must be transported (presumably by the LEC) to a point of interconnect with the wireless carrier for termination to the wireless carrier's customer.

In Montana, because wireless carriers generally do not have interconnection agreements or even direct connections with most rural LECs, the rural LECs would be required to transport calls to points of interconnection (with wireless carriers) that are often hundreds of miles from the rural LECs' service areas, at substantial cost to the LECs. It is true that many calls that originate from the petitioning carriers' customers for termination to customers outside the service areas of the petitioning carriers' customers are routinely routed to distant points of interconnection with terminating carriers, both wireless and wireline. However, these calls are either handed off, or "routed" to third party carriers, and the calls are "rated" as toll calls, or the terminating carrier has established a direct interconnection with the originating carrier.

In its *Intermodal Order*, the FCC specifically stated that interconnection agreements (which generally clarify how calls between customers of two carriers are exchanged) are not necessary for intermodal porting to take place (incomprehensibly, the FCC stated that the issues associated with transporting calls to points of interconnect outside the LEC's rate center were outside the scope of its LNP Order -- when in fact there could hardly be a more important issue for small carriers trying to implement the FCC's order).

The MITS companies requested that the Montana Commission grant at least a six month suspension of the intermodal LNP requirements and committed to continue analyzing the requirements and to closely monitor the related activity at the federal level (i.e., at the FCC and in the federal courts). Finally, the MITS companies offered to file a

report with the Montana Commission by May 24, 2004, detailing the status of these issues and indicating whether or not suspension of intermodal LNP requirements beyond November 24, 2004 would be necessary.

In lieu of granting the relief requested in the Petitions filed by MITS, MTA and Ronan/Hot Springs, the Montana Commission consolidated the LNP proceedings into a single docket and established a contested case procedural schedule.<sup>9</sup> Testimony supporting the Petitions was filed by the petitioning companies, a consumer group from western Montana, and the Montana Consumer Counsel. The only testimony opposing the Petitions was filed by Western Wireless.

As was evident in the information filed by the petitioning companies, compliance with the FCC's intermodal LNP rules would require substantial investments and without the luxury of large customer bases over which to spread these costs, significant customer rate impacts will result. For example, even using the Western Wireless' data contained in Exhibits 1A, 1B and 1C of Ron Williams' Testimony, including Western Wireless's estimated number of ports per year, the total estimated annual LNP costs for all petitioning companies ranged from \$440,204 (Western Wireless' estimate) to \$1,737,828 (Petitioner's estimate).

Using these estimates, the average LNP customer surcharge would range from \$0.43/month to more than \$13/month. Even the lower estimated LNP surcharge would constitute a significant adverse economic impact on the customers of the petitioning companies, especially since the customers who would be forced to pay for the implementation of LNP would not receive any benefit from LNP. Montana is a rural

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<sup>9</sup> See Montana PSC Docket No. D2004.3.39.

state with one of the lowest per capita incomes in the nation. Placing any additional costs on Montanan's phone bills clearly creates an adverse economic impact.

During the course of the Montana PSC contested case proceeding in Docket No. D2004.3.39, MITS, on behalf of its member companies, and Western Wireless initiated negotiations to attempt to reach a consensus regarding the implementation of intermodal LNP in Montana. These negotiations were successful and resulted in the execution of stipulations between Western Wireless and each of the MITS companies. These stipulations were presented to and approved by the Montana Commission.<sup>10</sup>

Each of the stipulations was tailored to address the unique issues associated with intermodal LNP between each MITS company and Western Wireless. The stipulations provided dates by which the wireline companies agreed to be LNP capable (which in some cases was not until 2006, with opportunities to extend the deadline further if necessary). The stipulations also addressed how calls to ported numbers would be routed, where the points of interconnections between the carriers would be located, and which carrier was responsible for the transit and/or transport costs.

The hope of the MITS' members was that the FCC would ultimately clarify responsibility for transport costs, particularly when the routing of the call required transport outside the service area of the rural local exchange carrier (RLEC) at issue. Therefore, the stipulations established responsibility for costs between the wireless and wireline carriers "until the earlier of such time as a direct interconnection is established or until the FCC issues an Order assigning responsibility for costs associated with the transport of calls to ported numbers when that transport includes routing beyond a local exchange carrier service area." Therefore, if the FCC never clarified those transport cost

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<sup>10</sup> See Montana PSC Order Nos. 6558b, 6558c, 6558d, 6558e, 6558f and 6558k in Docket No. D2004.3.39.

responsibilities, the state proceeding would have resulted in a permanent resolution of those issues.

#### **IV. Analysis and Conclusion**

From the perspective of MITS and its members, the FCC's request for comments focuses on two important issues. The first is identified in paragraph 10, in which the FCC seeks comment on the costs associated with potential compliance burdens. This much is clear in that regard: if small RLECs are forced to bear the burden of transporting calls to points outside their networks, they are going to have to rely on third-party carriers to accomplish such transport. In very rural areas, there is often little or no competition for such "transiting" functions. Therefore rates are likely to be high as are the costs to the RLECs. In the case of many RLECs, their geographic footprint is so large that even transporting calls within their service areas can be a costly proposition.

Lacking direction from the FCC, the RLECs in Montana were able to arrive at an acceptable set of ground rules with Western Wireless as to how traffic should be routed and who should bear the costs of that traffic. Frankly, the Montana companies will await the outcome of this proceeding with a certain degree of trepidation since it may well overturn stipulations that have made these costs acceptable up to this point. This leads to the second important issue.

In paragraph 15 of the FCC's request, comment is sought regarding the effectiveness of state proceedings pursuant to section 251(f)(2) of the Act. As should be clear from the foregoing, the state proceeding in Montana provided the state's incumbent RLECs with a critical forum in which to address the missing details on how to implement

the FCC's initial LNP order. Frankly, we do not know what we would have done without the availability of that proceeding. We found it to be a highly effective way of addressing providers on the other side of the issue, before a decision-maker who was familiar with the particular nature of the small RLECs that combined serve 83% of Montana's geographic area. The outcome was not perfect for us, and we doubt it was perfect for Western Wireless, but it was satisfactory and therefore left us in a much better position than we would have been in without it.

RESPECTFULLY SUBMITTED This 19<sup>th</sup> day of August, 2005

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